IN THE

Supreme Court of the United States

October Term, 1956

No. 1043

JAMES R. HOFFA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent,

CRIMINAL COURTS BAR ASSOCIATION (OF LOS ANGELES COUNTY),

Amicus Curiae.

Petition for Leave to File a Brief Amicus Curiae and Brief in Support of Petition for Writ of Certiorari, on Behalf of James R. Hoffa, from the Judgment of the United States Court of Appeals for the Seventh Circuit, in Banc.

Criminal Courts Bar Association
(of Los Angeles County)

By [illegible]

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CRIMINAL COURTS BAR ASSOCIATION (OF LOS ANGELES COUNTY),

Amicus Curiae.

Petition for Leave to File a Brief Amicus Curiae and Brief in Support of Petition for Writ of Certiorari, on Behalf of James R. Hoffa, From the Judgment of the United States Court of Appeals for the Seventh Circuit, No. 14692.

Your petitioner, the Criminal Courts Bar Association of Los Angeles County, California, unanimously petitions this Honorable Court for leave to file a petition amicus curiae for a writ of certiorari in behalf of James R. Hoffa v. United States of America in the so-called "Chicago" case from the Seven Circuit of the United States No. 14692, and in respect thereto sets forth as follows:

The Criminal Courts Bar Association of Los Angeles County consists of approximately 350 lawyers in the practice of criminal law, both prosecution and defense. They are interested in the high administration of justice and the fairness of trials wherever conducted, and in the interest of preserving rights for defendants, whether they be lowly indigents or at the head of large corporations or labor unions. They are interested in equal justice under the law.

They have therefore unanimously resolved to appear in this matter because of important questions of constitutional criminal law and their application to the fair administration of justice in the United States of America. They seek this Court's aid in the supervisory capacity over criminal justice

A request was made to the Solicitor General to consent to the filing of this petition amicus curiae in behalf of defendant James R. Hoffa and that consent has been refused. The Criminal Courts Bar Association of Los Angeles County therefore petitions this Honorable Court for leave and permission to present this petition amicus curiae and also to file a brief amicus curiae in the case itself in the event that certiorari is granted.

These are the important questions in which the Criminal Courts Bar Association of Los Angeles County is vitally interested:

I

The removal of juror Rayford Lee, the only negro juror, from the jury panel, after the trial and court's charge to the jury, and without the consent of the defendant Hoffa or his attorneys, was not only a violation of Rules of Criminal Procedure for the District Courts of the United States (Rule 24), but if it occurred in California it would have placed Hoffa once in jeopardy, according to the laws of California.

There is therefore a conflict in the views and holdings of the Seventh Circuit on this issue and the holding of the courts of California.

Juror Lee did not request the court to remove him from the jury, and defense attorneys objected to this removal. (Appendix, 2148) This was tantamount to an acquittal. *People v. Cage*, 48 Cal. 323, *People v. Webb*, 38 Cal. 467; *People v. Hunckeler*, 48 Cal. 331, 334.

In *People v. Young*, 100 Cal.App. 18, the Supreme Court of California held that the removal of a juror, without his consent and without the consent of the defendant, placed the defendant once in jeopardy in violation of the laws of the State of California and entitled the defendant to be discharged (100 Cal.App. 24).

Therefore, under California law, which endeavors to follow the laws of the United States, Hoffa would be entitled not merely to a reversal, but to his discharge as [illegible]

This is a highly important question of criminal law and procedure which this Court should resolve in this case by the grant of certiorari.

II

A second point about which the Criminal Courts Bar is highly concerned is the removal of the jury to a military establishment controlled by the United States and to keep that jury sequestered during the entire period of trial in the government's own military establishment.

We know of no rule of law which permits a judge to sequester a jury in the government's own military establishment and this, alone, leads to great unfairness of trial atmosphere and thus results in pressure upon the jury from the government's point of view.

A military establishment is not a neutral corner in which the jury is placed, nor a hotel to which jurors are generally sent, nor do we know of any law or authority that permits the U.S. Marshal to take jurors each night to a military establishment, owned and controlled by the government, and returned each morning under these circumstances. This alone, should vitiate the trial.

If the Court should uphold such proceedings, then it is possible for jurors in the Southern California Federal courts to be taken from Los Angeles to the federal penitentiary at Terminal Island, Wilmington, each night and it would have been possible, had the case been tried in California during the existence of Alcatraz, to have taken the jury each night to Alcatraz, or to the military base in San Francisco, or to the naval base at Treasure Island, or in a case tried at Seattle, to a naval yard there. Certainly, this does not lend itself to fair trial, nor fair consideration under fair atmosphere.

This Court should grant certiorari to resolve this important question, under this supervisory power of criminal justice.

III

The third point which concerns the Criminal Courts Bar Association is the matter of permitting evidence to be presented in the Chicago case regarding the conviction in the Tennessee case, which was on appeal and which appeal had not become final. Although counsel in the Chicago case tried to get their case tried first, the govern-

ment was able to maneuver delays that caused the Tennessee case to be tried first.

We regard such procedure as unfair trial tactics and it puts a stigma of discredit against the accused without his being able to meet it and places him on trial, in effect, with a prejudice resulting from another case still unresolved and undetermined. This Court should grant certiorari to resolve this incorrect procedure in other federal criminal trials under its supervisory administration of criminal justice.

IV

A fourth matter which concerns the Criminal Courts Bar Association is the prejudicial publicity which surrounded the trial of this case and which, in the light of other decisions had by this Court, held that the appellant was denied fair trial guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States. (Sheppard v. Maxwell, 16 L.ed.2d 600, Sup.Ct. No. 490, Oct. Term, 1965)

We request the Court to look at the publicity (Exhibits in Appendix in the Court of Appeals for the Seventh Circuit, No. 14292) and particularly the photographs and articles in the Chicago Tribune, Life Magazine, Chicago Sun-Times and Chicago Daily News. A mere glance at these pictures and photographs should convince members of this Court that they are as aggravating as those which were exhibited to the Court in *Sheppard v. Maxwell* and which denied Dr. Sheppard a fair trial. (See also: *Estes v. Texas*, 381 U.S. 532, 14 L.ed.2d 543)

We submit that the bad and prejudicial publicity in this case was equally as flagrant as that in *Sheppard* or in *Estes* and that in the *Ruby* case. We respectfully submit that examination of these exhibits will show that the trial was conducted with great unfairness in these proceed-

V

[illegible] public trial in the selection of [illegible] provisions of the Consti- [illegible] setting the de-

The grand jurors were drawn in the same manner as petit jurors. (App. 140-142; Section 393) On April 1, 1964 the trial judge entered an ex parte order to draw 300 jurors for the trial but *denied access* to the names of any persons so drawn to any party until the jurors were seated in the jury box to be examined on voir dire. (App. 120) A special deputy marshal was transferred from Washington, D.C. to Chicago, Illinois for special assignment to the case. His instructions were to act on behalf of the United States Marshal in summoning the jury venire. We submit that such procedure was unconstitutional and violative of the right of fair trial.

Section 1864, Title 28, provides in part that the names of grand and petit jurors shall be publicly drawn from the box, and that the jury box shall from time to time be refilled by the clerk of the court, his deputy and the jury commissioner.

The statute was not followed in this case, and refusal to draw the jury publicly or make the names known denied rights which we believe every defendant in a criminal case is entitled to have. Implicit in the right to exercise peremptory challenge is the right to know about the prospective jurors in the community.

The matter of public recordation of jury panels is a right that has been fundamentally recognized. In some districts, as in San Francisco, the names and addresses of prospective jurors are published. In capital cases, it is required that the names and addresses of jurors be supplied at least three days before trial. (Title 18, Section 3432) Yet, in this important case, that right was denied.

We therefore ask on behalf of defendant Hoffa that this Court grant certiorari so that we may brief and present our views more fully.

Respectfully submitted,

THE CRIMINAL COURTS BAR ASSOCIATION
(OF LOS ANGELES COUNTY)

by MORRIS LAVINE, Esq.
Attorney

APPENDIX A

At a regular meeting of the Board of Directors of the Criminal Courts Bar Association of Los Angeles County, held on December 13, 1966 at the Los Angeles County Law Library, it was unanimously resolved as follows:

RESOLVED: That because of the importance of the questions involved in the administration of criminal justice, the Criminal Courts Bar Association of Los Angeles County does hereby request and direct its past president, Morris Lavine, to file a petition for a writ of certiorari as amicus curiae in the case of James R. Hoffa, Appellant, v. United States of America, Appellee, from the decision of the United States Court of Appeals for the Seventh Circuit in cases Nos. 14892-14896, decided October 4, 1966, and in which cases rehearing as denied.

RESOLVED FURTHER: That if certiorari is granted in said case, then and thereafter Morris Lavine is requested and directed to file a brief as amicus curiae in behalf of the Criminal Courts Bar Association of Los Angeles County in said case.

WARREN L. ETTINGER
President

EDWARD P. HART
Secretary

APPENDIX B

ST. LOUIS, MO., JAN. 20, 1967

CRIMINAL COURTS BAR ASSN. OF
LOS ANGELES COUNTY
ATTN. MORRIS LAVINE, ATTORNEY AT LAW
215 West 7th Street
Los Angeles, California

IN RE UNITED STATES OF AMERICA VERSUS HOFFA ET AL CAUSE NUMBER 14892 UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT YOU ARE HEREBY AUTHORIZED TO FILE A BRIEF AS AMICUS CURIAE IN THE SUPREME COURT OF THE UNITED STATES IN THE ABOVE CAUSE.

MORRIS A. SHENKER
Attorney for Petitioner
James R. Hoffa